



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. AMS-LPS-13-0079]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act of 1985 (Act), to reflect changes in cattle inventories as well as cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in July 2011. These adjustments are required by the Beef Promotion and Research Order (Order) and result in a decrease in Board membership from 103 to 100, effective with the U. S. Department of Agriculture's (USDA) appointments for terms beginning early in the year 2015. The rule also makes technical amendments to update and correct information in the Order and regulations.

DATES: Effective [Insert date one day after publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Angie Snyder, Research and Promotion Division, on 202/720-5705, fax 202/720-1125, or by e-mail at angie.snyder@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and

safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a “non-significant regulatory action” under § 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this rule would not have substantial and direct effects on Tribal Governments and would not have significant tribal implications.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601-612), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to

fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the February 2013 publication of “Farms, Land in Farms, and Livestock Operations,” USDA’s National Agricultural Statistics Service (NASS) estimates that the number of operations in the United States with cattle in 2012 totaled approximately 915,000, down from 950,000 in 2009. The majority of these operations that are subject to the Order may be classified as small entities. There are approximately 25 importers who import beef or edible beef products into the United States and 297 importers who import live cattle into the United States. It is estimated that the majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural service firms as those having annual receipts of \$7.0 million or less, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

The rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory, as well as changes in cattle and beef imports. The adjustments are required by the Order and result in a decrease in Board membership from 103 to 100.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed under part 1260 were previously approved under OMB control number 0581-0093.

Background

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901-2911) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Reapportionment

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary of Agriculture from nominations submitted by certified producer and importer organizations. A producer may only be nominated to represent the State or unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to USDA modifications to the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on

the Board. Each unit that has an additional 1 million head of cattle within a unit qualifies for additional representation on the Board as provided in §1260.141(e)(4). As provided in §1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment, based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members in 1996. The Board was decreased to 110 members in 1999, 108 members in 2001, and 104 members in 2005; increased to 106 members in 2009; and decreased to 103 members in 2011. This proposal amends § 1260.141(a) by decreasing the number of Board members from 103 to 100 with appointments for terms effective early in 2015.

The current Board representation by States or units was based on an average of the January 1, 2008, 2009, and 2010 inventory of cattle in the various States as reported by NASS. Current importer representation was based on a combined total average of the 2007, 2008, and 2009 live cattle imports as published by USDA's Foreign Agricultural Service and the average of the 2007, 2008, and 2009 live animal equivalents for imported beef products.

In considering reapportionment, the Board reviewed cattle inventories for the period of January 1, 2011, 2012, and 2013 as well as cattle, beef, and beef product import data for the period of January 1, 2010, to December 31, 2012. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 2011, 2012, and 2013 cattle inventory numbers would best reflect the number of cattle in each State or unit since publication of the last reapportionment rule

published in 2011 (76 FR 42012). The Board reviewed data published by USDA's Economic Research Service to determine proper importer representation. The Board recommended the use of a combined total of the average of the 2010, 2011, and 2012 cattle import data and the average of the 2010, 2011, and 2012 live animal equivalents for imported beef products. The method used to calculate the total number of live animal equivalents was the same as that used in the previous reapportionment of the Board. The live animal equivalent weight was changed in 2006 from 509 pounds to 592 pounds (71 FR 47074).

As discussed in the proposed rule, the Board's recommended reapportionment plan would have decreased the number of representatives on the Board from 103 to 99. Based on the Board's recommendation, New Mexico would lose one Board seat and Texas would lose two Board seats. The Importer Unit loses one Board seat. This final rule, however, results in Texas losing one Board seat.

The States and units affected by the reapportionment plan and the current and revised representation per unit are as follows:

State/unit	Current Representation	Revised Representation
New Mexico	2	1
Texas	14	13
Importers	7	6

The Board reapportionment takes effect with appointments that will be made to fill positions beginning January 1, 2015.

Technical Amendments

A number of technical amendments are being made to update or correct information contained in the provisions of the Order and regulations. These include:

Section 1260.129 references the U.S. Customs Service of the U.S. Department of the Treasury. The language has been amended to reflect the updated agency and department.

Section 1260.312(4)(c) has been amended to update an outdated address.

Section 1260.316 has been amended to reflect the correct OMB paperwork reduction number.

Comments

USDA published the proposed rule for public comment in the March 25, 2014, Federal Register [79 FR 16236]. The comment period ended April 24, 2014. USDA received two comments by the deadline. One comment from an individual was outside the scope of the rulemaking.

Another comment, submitted jointly by eight Texas cattle, dairy, and farm associations, was against Texas losing two member positions because the 3-year average reflects a loss of cattle numbers due to a severe drought. With many regions of the State beginning to return to more normal precipitation and pasture conditions, the commenters argued, plus record cattle prices encouraging heifer retention and herd rebuilding, cattle numbers in Texas will increase in the next 1 or 2 years.

In response, USDA agrees that the drought and other factors affected cattle inventory across the country but in Texas in particular. In addition, based upon available information USDA has concluded that Texas cattle herds will increase due to beneficial environmental and economic conditions. In addition, reports indicate that cattle will be moving into Texas from other States. Therefore, by the time the Board is seated in February 2015 when this

reapportionment would actually take effect, cattle numbers in Texas should increase to a level to warrant the loss of only one Board member position in Texas rather than two as proposed. As a result, USDA is decreasing the number of Board members in Texas to 13 rather than 12, as proposed.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after the publication in the Federal Register because this action needs to be in effect as soon as possible to allow sufficient time for completion of the nomination process and appointments for the term of office beginning February 2015.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260--BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901-2911 and 7 U.S.C. 7401.

2. Revise § 1260.129 to read as follows:

§ 1260.129 Customs Service.

Customs Service means the United States Customs and Border Protection of the United States Department of Homeland Security.

3. In § 1260.141, paragraph (a) is revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2014 Board nominations and the associated appointments effective early in the year 2015, the United States shall be divided into 37 geographical units and,

1 unit representing importers, for a total of 38 units. The number of Board members from each unit shall be as follows:

CATTLE AND CALVES ^{1/}

STATE/UNIT	(1,000 HEAD)	DIRECTORS
1. Arizona	897	1
2. Arkansas	1,663	2
3. Colorado	2,667	3
4. Florida	1,667	2
5. Idaho	2,270	2
6. Illinois	1,097	1
7. Indiana	840	1
8. Iowa	3,883	4
9. Kansas	6,083	6
10. Kentucky	2,193	2
11. Louisiana	787	1
12. Michigan	1,107	1
13. Minnesota	2,377	2
14. Mississippi	920	1
15. Missouri	3,833	4
16. Montana	2,533	3
17. Nebraska	6,317	6
18. New Mexico	1,423	1
19. New York	1,403	1
20. North Carolina	810	1
21. North Dakota	1,727	2
22. Ohio	1,247	1
23. Oklahoma	4,600	5

24. Oregon	1,303	1
25. Pennsylvania	1,610	2
26. South Dakota	3,733	4
27. Tennessee	1,930	2
28. Texas	12,167	13
29. Utah	790	1
30. Virginia	1,547	2
31. Wisconsin	3,433	3
32. Wyoming	1,317	1
33. Northwest		1
Alaska	13	
Hawaii	138	
Washington	1,117	
Total	1,267	
34. Northeast		1
Connecticut	49	
Delaware	18	
Maine	87	
Massachusetts	40	
New Hampshire	34	
New Jersey	31	
Rhode Island	5	
Vermont	267	
Total	531	
35. Mid-Atlantic		1
Maryland	196	
West Virginia	390	
Total	586	

36. Southeast		3
Alabama	1,220	
Georgia	1,023	
South Carolina	370	
Total	2,613	
37. Southwest		6
California	5,283	
Nevada	463	
Total	5,747	
38. Importer ^{2/}	5,927	6

^{1/} 2011, 2012, and 2013 average of January 1 cattle inventory data.

^{2/} 2010, 2011, and 2012 average of annual import data.

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4. In § 1260.312, paragraph (c) is revised to read as follows:

§ 1260.312 Remittance to the Cattlemen's Board or Qualified State Beef Council.

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(c) Remittances. The remitting person shall remit all assessments to the qualified State beef council or its designee, or if there is no qualified State beef council, to the Cattlemen's Board at P.O. Box 803834, Kansas City, MO 64180-3834, with the report required in paragraph (a) of this section not later than the 15th day of the following month. All remittances sent to a qualified State beef council or the Cattlemen's Board by the remitting persons shall be by check or money order payable to the order of the qualified State beef council or the Cattlemen's Board. All remittances shall be received subject to collection and payment at par.

5. Section 1260.316 is revised to read as follows:

§ 1260.316 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0581-0093.

Dated: August 7, 2014.

Rex A. Barnes,
Associate Administrator,
Agricultural Marketing Service.

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